

THE LEGAL AID SOCIETY

Justice in Every Borough.

TESTIMONY

New York State Senate
New York State Assembly

Exploring Solutions to the Disproportionate Impact of COVID-19 on
Minority Communities.

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The Legal Aid Society submits this testimony to the New York State Senate and the New York State Assembly regarding the disparate impact that COVID-19 is having on communities of color in New York. We thank Edward Braunstein, Chair of the Assembly Standing Committee on Cities and Robert Jackson, Chair of the Senate Standing Committee on Cities, for inviting us to speak on behalf of the communities we serve. Please note that we have provided a summary of our comprehensive recommendations at the end of this written testimony.

Who We Are

Since 1876, The Legal Aid Society has provided direct legal services to low-income New Yorkers. Over the years, our organization has expanded to become the nation's largest and oldest legal services provider for low-income individuals and families. We specialize in three distinct practice areas -- Criminal Defense, Civil, and Juvenile Rights -- where we passionately advocate for our clients in their individual case, for their communities in our policy work, and for institutional change in our law reform litigation. Each year our staff handles over 300,000 cases throughout New York City, bringing a depth and breadth of perspective that is unmatched in the legal profession. The Society's law reform/social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Legal Aid Society provides comprehensive representation to many of the most marginalized communities in New York. We are a valuable piece of the New York City tapestry, and our work is deeply interwoven within the fabric of many low-income New Yorkers' lives.

Our Criminal Defense Practice is the city-wide public defender, practicing in each of the five boroughs and annually representing over 200,000 low-income New Yorkers accused of

unlawful or criminal conduct on trial, appellate, post-conviction matters, and representing prisoners' rights in city jails and state prisons seeking to reform systems of incarceration.

The Legal Aid Society's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 34,000 children, including approximately 4,000 who were arrested by the NYPD and charged in Family Court with juvenile delinquency.

The Society's Civil Practice provides comprehensive legal assistance in legal matters involving housing, foreclosure and homelessness; family law and domestic violence; income and economic security assistance (such as unemployment insurance benefits, federal disability benefits, food stamps, and public assistance); health law; immigration; HIV/AIDS and chronic diseases; elder law for senior citizens; low-wage worker problems; tax law; consumer law; education law; community development opportunities to help clients move out of poverty; and reentry and reintegration matters for clients returning to the community from correctional facilities. Last year our Civil Practice worked on more than 50,000 individual cases and legal matters, benefiting more than 125,000 low-income children and adults.

At The Legal Aid Society we understand that to bring lasting justice, fairness and equity to our clients and their communities, we must not only represent our individual clients, but we must also change the laws and policies that are causing the harm. We create this change through affirmative litigation, law reform and policy advocacy and we have a record of success that is decades long, and has benefited millions of vulnerable New Yorkers, with the landmark rulings in many of these cases having statewide and national impact.

The breadth of our practice and the many ways our work directly connects us with low-income New Yorkers – who are mostly from communities of color – sharply focuses our ability to see the many interlocking ways that our most vulnerable communities are impacted by systemic injustice, discrimination, and neglect. The Society’s unique role provides our organization with one of the widest lenses to observe and address the ways in which New Yorkers of color experience inequities in many areas of City life, including health care, employment, housing, income and food security, policing, incarceration, and immigration enforcement. The disparate impact of race, as well as gender, sexuality, ability, and national origin, often drives these inequities. We have challenged these systemic problems and their underlying causes through our litigation and our relentless policy work and won hard earned successes on behalf of our clients and their communities.

The Marginalization of Communities of Color

Sadly, when it became apparent that New York City was going to be impacted by COVID-19, many advocates and organizers anticipated the disproportionate fallout the pandemic would have on vulnerable communities of color. Our staff at The Legal Aid Society immediately raised concerns that many people of color were already struggling because of limited access to healthcare, high rates of unemployment or underemployment in “essential” industries, consistent criminalization in their communities and disproportionately higher rates of incarceration in jails, prisons, and detentions centers that are ill-equipped to navigate a highly infectious disease. For many people of color, this pandemic is only adding to the ongoing crisis that their communities face. COVID-19 has highlighted the disparities for poor Black and brown New Yorkers, disparities rooted in centuries of marginalization and racial oppression. These

disparities did not develop overnight, they are intrinsically linked with our national history of exploiting Black people, immigrants, and other marginalized people.

When we explore the context that has led to the shocking disproportionate fatalities and infection rates for COVID-19 in communities of color, it is abundantly clear that a confluence of longstanding discriminatory treatment has placed people of color in the crosshairs of this pandemic and makes them similarly vulnerable in any future crisis that New York State might face. While New York City was experiencing an economic boom, many communities of color were still grappling with basic necessities not being met. As reflected in indicators of employment, wealth, environmental safety, health, criminalization and other crucial statistics, communities of color have consistently lagged behind their wealthier white peers. Even prior to the pandemic, the federal unemployment rate for Black people was almost twice as high as the white unemployment rate. Now with COVID-19 the Black unemployment rate has spiked to 19.4%, dramatically higher than the 11.9% unemployment rate for white people.¹

Compounding the high rate of unemployment is the fact that many Black and brown people – especially recent immigrants – are more likely to be employed in industries with the least economic security, i.e., retail salespersons, information and records clerks, cooks and food preparation workers, building cleaners and janitors, material movers, food and beverage servers, construction trade workers, material dispatchers and distributors, motor vehicle operators, and personal care and service providers. Most of these positions are now being deemed as “essential” roles, which in the midst of a pandemic places these workers at increased risk of exposure to COVID-19. They are also working in the “gig economy” where they are afforded far fewer rights, protections, and benefits of traditional employees. Indeed, even with federal

¹ <https://tcf.org/content/commentary/new-data-show-true-march-jobless-rate-near-20-percent/?session=1&session=1&session=1>

expansion of unemployment benefits to independent contractors, the failure of the New York State Department of Labor to process these claims have left independent contractors with no income whatsoever.

Because of the economic insecurity inherent in these industries, many essential workers have little choice but to work during this crisis even if they are living with comorbidities. Black people are more likely to be employed as essential workers. Although Black people make up 21% of all workers in New York City, they make up 33% of essential workers. Similarly, Latinx workers make up 27% of all New York City workers and are 30% of all essential workers. Immigrants in New York City make up 53% of all essential workers.² These figures reveal why communities in Queens and parts of Brooklyn with large immigrant populations and communities of color have been the hardest hit during this pandemic. The concentration of essential workers makes it increasingly likely that individuals in those neighborhoods will contract COVID-19 and inadvertently spread it within these same communities.

Many of these workers should qualify for government benefits based upon their lack of financial resources, but because of needless bureaucratic complexity, strict guidelines on who qualifies, and failures in our social safety net, they are unable to access the benefits. For many essential workers, they are blocked from accessing benefits because they make slightly too much money, have a criminal record, or they find it too cumbersome to navigate the process. In 2017 in New York City, 46.8% of all Black people, 48.5% of all Asian people, and 55.5% of all Latinx people were living in or near New York's poverty threshold, compared to 27% of white New Yorkers.³ Moreover, when we look at the lack of affordable housing for many families in New York City, we continue to see this pattern of disproportionately affecting people of color. Black

² <http://fiscalpolicy.org/wp-content/uploads/2020/04/Essential-Workers-Brief-Final.pdf>

³ <https://www1.nyc.gov/site/opportunity/poverty-in-nyc/data-tool.page>.

and Latinx New Yorkers are disproportionately affected by homelessness. Approximately 57% of heads of household in shelters are Black, 32% are Latinx, and only 7% are white.⁴ The compounding of multiple factors such as gentrification, housing speculation, landlords using unscrupulous means to push low-income tenants out of their homes, and a dearth of affordable housing has pushed many Black and Latinx New Yorkers into the shelter system or into the street. We know that in the aftermath of this pandemic, we are likely to see a sharp increase in these numbers especially for communities of color.

Critical action must be taken to prevent many of these communities from falling even further behind their white counterparts. Historically in New York, Black, brown, and Indigenous communities have consistently been discriminated against and disadvantaged; New York has never fully addressed or repaired the damage that this has had on these communities. Rather, New York City has doubled down on this historical injustice by criminalizing people of color; for many Black and Latinx New Yorkers, the NYPD is a violent occupying force in their communities.⁵ Black and Latinx people are arrested more frequently for low level allegations, even for behavior that all demographics engage in, such as marijuana use.⁶ In 2019, 48% of all people incarcerated in New York State prisons were Black⁷, while Black people are only 17.6% of the population in New York⁸. Similarly, 24% of people incarcerated in New York State prisons in 2019 were Latinx, while Latinx people are only 19.2% of the population in New York.⁹

⁴ <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/>.

⁵ <https://www.vox.com/first-person/2020/2/14/21136892/stop-and-frisk-bloomberg-activist>.

⁶ <https://www.vox.com/identities/2018/5/14/17353040/racial-disparity-marijuana-arrests-new-york-city-nypd>.

⁷ <https://data.ny.gov/d/55zc-sp6m/visualization>.

⁸ <https://www.census.gov/quickfacts/fact/table/NY/RHI225218#qf-headnote-a>.

⁹ <https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork,NY/PST045219>

Even in the context of child welfare, prior to COVID-19, children of color were grossly overrepresented in the city’s child welfare system. While black children represent less than a quarter of the city’s youth, they make up over 55% of the population in foster care.¹⁰ Black children in New York City are 6.5 times as likely to be reported to Statewide Central Register of Child Abuse and Maltreatment compared to white children, 8.3 times as likely to have the investigation “indicated,” and 12.3 times as likely to be in foster care.¹¹ Hispanic children in New York City are likewise more likely to be involved in the child welfare system when compared to their white contemporaries; Hispanic youth in New York City are 6 times as likely to be involved in an indicted case and 5 times as likely to be in care when compared to white children.¹²

Similarly appalling racial disparities exist in New York City’s juvenile justice system. Children and teenagers in New York City jails are almost exclusively poor, and Black or Latinx. Many have experienced trauma and at least one significant social issue beyond poverty that causes instability in their lives. According to ACS’ Detention Demographic Data for FY 19, 66.9% of all New York City youth admitted to secure detention facilities in 2019 self-identified as Black and 28.5% identified as Hispanic; similarly, 67% of those admitted to non-secure detention facilities identified as Black and 26.7% as Hispanic.¹³ Virtually all New York City youth admitted to non-secure or limited secure placement (youth held pursuant to a disposition of their case) are Black or Hispanic.¹⁴

¹⁰ https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf

¹¹ <https://ocfs.ny.gov/main/reports/DMR-County-Comparison-2018.pdf>

¹² Ibid.

¹³ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2019/LL44DDRFY19.pdf>

¹⁴ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2019/LL44CTHDReportFY19.pdf>

As the national discourse begins to shift towards blaming communities of color for the high rates of comorbidities in these communities, it is crucial that the New York State Legislature refuse to assign personal blame for systemic oppression. As a result of environmental racism, medical racism, ableism, and poverty experienced in communities of color, Black and brown people have higher rates of comorbidities, such as asthma, diabetes, and heart disease that make them even more vulnerable to severe illness or death if they contract COVID-19 than their wealthier and white neighbors. Many of the health risks that have exacerbated the racially disparate impact of COVID-19 in New York City, are rooted in external systemic racism. For example, the communities with the lowest rates of childhood asthma also have the lowest rates of imprisonment, whereas in neighborhoods such as Brownsville, Hunts Point and Central Harlem, rates of incarceration and asthma rates per child are significantly higher than in wealthier whiter neighborhoods.¹⁵ “Public health experts consider community-level factors such as these — including incarceration — ‘social determinants of health.’ To counteract these problems, they suggest taking a broad approach, addressing the “upstream” economic and social disparities through policy as well as improving access to clinical health care.”¹⁶ The New York State Legislature has a rare opportunity to push for transformative change to address these underlying racial disparities as New York addresses this pandemic.

¹⁵ <https://www.prisonpolicy.org/origin/ny/report.html#table1>.

¹⁶ <https://www.prisonpolicy.org/origin/ny/report.html>.

Impact of COVID-19 on Communities of Color

Housing

The COVID-19 pandemic is also causing devastating and lasting economic hardship that disproportionately impacts low- and moderate-income renters. New York State has 1.6 million renter households. The COVID-19 pandemic has amplified New York State’s ongoing housing crisis in ways that are impossible to ignore. Housing insecurity is a brutal fact of life for many New Yorkers. Even in a strong economy, a budget overwhelmed by housing costs increases a family’s risk of food security, lack of access to proper medical care and eviction. With little room for savings, a reduction in work hours or an unexpected expense cause turmoil and may lead to displacement. Forty-six percent of New York State renters are rent burdened, and four out of ten low-income people in New York are either homeless or severely rent burdened.¹⁷ 2,034,100 New Yorkers in 940,300 low-income households pay more than 50 percent of their incomes towards their rents¹⁸. Black, Latinx, and Asian households were disproportionately rent burdened before the pandemic.¹⁹ Last year, 63% of Black renters and 60% of Latinx renters in New York City reported that they had less than one thousand dollars in savings²⁰. With 1.8 million new filings for Unemployment Insurance in New York State since March 14, 2020,²¹ Black and Latinx renters cannot rely on savings to pay their rental obligation. In our second full month of this crisis, it is not surprising to see the hashtag “Can’t Pay May” all over social media.

¹⁷ Center for Budget and Policy Priorities, *New York Federal Rental Assistance Fact Sheet*, (Dec. 10, 2019), available at <https://www.cbpp.org/research/housing/federal-rental-assistance-fact-sheets#NY>.

¹⁸ *Id.*

¹⁹ Fiscal Policy Institute, *Nearly Half of New York Renting Families are Rent Burdened*, (April 2019), available at http://fiscalpolicy.org/wp-content/uploads/2019/04/NYS-RentBurdens_Apr2019_MAIN-3.pdf.

²⁰ Oksana Miranova, The Community Service Society, *Testimony: A Housing Response to Covid-19* April 2020, available at <https://www.cssny.org/news/entry/testimony-a-housing-response-to-covid-19>.

²¹ Department of Labor, Division of Research and Statistics, *Research Notes*, available at <https://labor.ny.gov/stats/PDFs/Research-Notes-Initial-Claims-WE-5022020.pdf>

Further, our clients without immigration status are facing insurmountable odds as they work predominantly in industries that have shuttered and they cannot access state or federal benefits for workers who have lost their jobs. According to the Migration Policy Institute, 92% of New York State's population of immigrants without status came from Asia, South and Central America, Mexico, the Caribbean, and Africa,²² 68% were in the labor force and 78% were renters. Prior to the pandemic, 53% were under 200% of the federal poverty line²³. The Center for New York City Affairs estimated that about 192,000 undocumented workers in New York City have lost their jobs as of mid-April.²⁴ This means that over half (54 percent) of all undocumented workers have been dislocated.²⁵ For undocumented workers, their likelihood of displacement is twice that for local workers overall.²⁶ We are told our clients have lost their employment, cannot access benefits, cannot pay their rents, and are running out of food.

Housing insecurity now impacts a far broader range of households than it did earlier this year. Reeling from a sudden loss of income, low- and moderate-income renters on the precipice, rent burdened and without savings, have now fallen off of a financial cliff. Stay-at-home orders triggered mass layoffs and shuttered businesses and entire industries. A weekly survey, conducted by public health experts over the course of the pandemic, found that one in three New

²² Migration Policy Institute, *Profile of Unauthorized Population: New York*, available at <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/NY>.

²³ *Id.*

²⁴ James A. Parrott & Lina Moe, *The New Strain of Inequality: The Economic Impact of Covid-19 in New York City* 18 (Apr. 15, 2020), The New School Center for New York City Affairs, https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5e974be17687ca34b7517c08/1586973668757/NNewStrainofInequality_April152020.pdf.

²⁵ *Id.*

²⁶ *Id.*

Yorkers did not pay their rent or mortgage in April.²⁷ Sixty-two percent of those who were unable to pay their rent stated that they feared eviction.

While New Yorkers are now protected from eviction by Governor Andrew Cuomo's 90-day eviction moratorium, the economic landscape is unlikely to be dramatically altered by the time of the end of the state moratorium on June 20th.²⁸ By June 20th, renters will owe months of rental arrears and fees; many will promptly face eviction proceedings seeking thousands of dollars of debt and dispossession. Far from solving the crisis, the end of this short-term moratorium will be catastrophic for renters who have not received a paycheck in months. On May 7, 2020, Governor Cuomo amended his executive order. The new executive order lifts the moratorium for every tenant in New York State except for those in nonpayment proceedings where tenants can show they are receiving unemployment benefits or can prove that they suffered a COVID-19 related financial hardship. For everyone else on June 21st, evictions may proceed across the State.²⁹

Other jurisdictions have recognized that an effective response to this impending eviction crisis includes an eviction moratorium that extends past the state of emergency.³⁰ New York should be leading this issue, and we strongly support the passage of legislation that will allow our communities a chance to remain intact as we recover from the global pandemic.

²⁷ *CUNY New York City COVID-19 Survey Week 5 (April 10-12)*, CUNY Graduate School of Public Health & Health Policy, available at <https://sph.cuny.edu/research/covid-19-tracking-survey/week-5/>.

²⁸ See Executive Order 202.8, available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf.

²⁹ See Executive Order No. 202.28, available at <https://www.governor.ny.gov/news/no-20228-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

³⁰ *Covid-19 Housing Policy Scorecard*, The Eviction Lab, available at <https://evictionlab.org/covid-policy-scorecard/>.

In the absence of such legislation or in a Governor interested in stopping the tidal wave of evictions heading our way, we urge the legislature to immediately pass S8140A/A10248, S8192/A10290, and S 2892A/A 5030.

New York State must provide rental assistance to tenants who have faced COVID-19 related financial hardship. That is why S8140A/A10248 must be enacted immediately. If we want to avoid decades of spiraling depression in this State, we need to stop hundreds of thousands of New Yorkers from becoming homeless. The eviction of any one household is a tragedy – eviction of thousands of rental households is a humanitarian crisis. The loss of a home is not the only consequence of eviction, which can have devastating, long-term negative effects on employment outcomes, school performance and physical and mental health. Mass displacement will undermine recovery efforts for the foreseeable future and traumatize entire communities. Because truly affordable housing is in limited supply in New York State, many renters will have no choice but to double-up with friends or family or enter a shelter system already strained by an intractable homelessness crisis. It is inevitable that among those evicted will be people sick with COVID-19 or asymptotically and unknowingly carrying the virus. Homeless New Yorkers cannot isolate at home or practice social distancing in congregate shelters. Those forced to survive on the streets also face increased risks for both contracting COVID-19 and experiencing serious complications from the virus.

The State of New York issued a state of emergency and eventually ordered that non-essential businesses close and New Yorkers stay home. And New Yorkers stayed home thus avoiding a greater catastrophe than what we have already faced. However, almost two million New Yorkers lost their jobs. This State must provide a way for New York tenants to stay in

their homes. Otherwise New York will fail to recover its pre-pandemic economic health. Rental assistance is one way to provide desperately needed housing support.

We strongly support the “Safe Harbor” bill, S8192A/A10290. This bill would amend RPAPL §711 to provide that during the state of emergency and through six months after the state of emergency is lifted, no tenant can receive a judgment of possession for a case brought by his or her landlord for nonpayment of rent. If a tenant owes rent from March 7, 2020 through six months after the state of emergency is lifted, a case may be brought but if the tenant is found to owe rent, a money judgment can be entered against the tenant.

Under normal circumstances, when a tenant owes rent, the landlord sues the tenant and at the end of the case a possessory judgment is entered against the tenant. If the tenant does not make timely payments of the arrears, a warrant is issued to a marshal or a sheriff and that marshal or that sheriff can evict the tenant from the home. The landlord can then pursue the tenant for the money owed in small claims court. The landlord easily gets a money judgment and then can attach the tenant’s bank accounts or garnish wages.

S8192A/A10290 would allow the tenant to remain in their home but allow the landlord to pursue a money judgment against the tenant. This would encourage landlords to work with their tenants to come to an equitable agreement to address the money owed and give the tenant the opportunity to return to economic stability. This pause in evictions will also provide time for Congress to act to provide tenants with the subsidies that will allow them to stay in their homes.

Lastly, we urge passage of S 2892A (Salazar)/A 5030 (Hunter). The Legal Aid Society believes that prohibiting evictions that are without cause is an essential tool in the fight to prevent displacement that undermines family stability. Now more than ever the displacement of a family from a home without cause puts that family into tremendous danger.

The Good Cause bill would extend the right to a renewal lease and protections from unconscionable rent increases to all tenants across New York State, except those living in owner-occupied buildings with four or fewer units. The bill requires a landlord to obtain an order from a judge certifying that an eviction is for a good cause before they can remove a tenant from the unit. It further stipulates that the end of a lease is not a good cause. The bill also acknowledges that steep rent increases are often de facto evictions, and requires that rent increases of more than 1.5 times the annual percentage change in the consumer price index be presumed unreasonable, unless accompanied by special conditions.

Landlords can file eviction cases on June 21, 2020. If a landlord's tenant has a COVID-19 financial hardship, and if that tenant lives in an unregulated unit, the landlord has a choice: follow the Governor's executive order and delay eviction proceedings or bring a holdover case to evict the tenant without cause. We expect to see our clients who are currently struggling to pay their rent evicted through this type of proceeding.

If Good Cause eviction were passed, tenants in 600,000 additional units across the City would be afforded basic protections.³¹ This would cost the State nothing but would be invaluable to the tenants of New York. Thus, we strongly support S 2892/A 5030 and urge the legislature help tenants stay home during this crisis.

While the problems of New York State's renters cannot be solved by New York State alone, it is absolutely essential that our elected officials make clear to our Congressional delegation that they must act or we will be facing hundreds of thousands of new homelessness and a worsening health crisis. We cannot ignore the plight of New York State's renters and expect to survive this crisis. We see extreme need for robust short term aid for tenants who will

³¹ Tom Waters, Community Service Society, Testimony before the Assembly Housing Committee, May 2, 2019.

get their jobs back when the economy reopens, medium term rental support for those who will need more time to obtain employment, and more long term Section 8 for those because of the loss of a bread winner or because of health issues may not be able to pay their rent within two years. We understand that the state budget may not be able to support all of the rental support needed but New York State will have to address the needs of New Yorkers who cannot access federal and state benefits.

The New York State Office of Temporary and Disability Assistance (OTDA) also plays a critical role in addressing the dramatic increase in housing instability and risk of homelessness caused by the COVID-19 crisis. It is essential that OTDA work with stakeholders to maximize availability of short-term rent arrears and sustainable subsidies for more New Yorkers.

Homelessness

Over 250,000 New Yorkers were homeless in the 2018-2019 school year, including over 150,000 children.³² This number exceeds the populations of every city in the state with the exception of New York City.³³ New York City continues to experience a homelessness crisis, with over 60,000 people sleeping in a multi-faceted system of City shelters, and the vast majority of people experiencing homelessness are people of color. The overrepresentation of communities of color experiencing homelessness is staggering: 86% of homeless single adults identify as Black or Hispanic, with only 10% of homeless single adults identifying as white.³⁴ Individuals seeking shelter alone, which include the single adult population and runaway and

³² *Homelessness in New York has become a vicious cycle, with state policies failing to match the scale of the crisis*, Say Yes to HSS (Paid for by Coalition for the Homeless), <https://sayyestohss.org/about-home-stability-support/> (last visited May 16, 2020).

³³ *Id.*

³⁴ *State of the Homeless 2020*, Coalition for the Homeless, available at <https://www.coalitionforthehomeless.org/state-of-the-homeless-2020/>

homeless youth population, are most at risk during this pandemic. The Department of Homeless Services (DHS) shelters for single adults and the Department of Youth and Community Development (DYCD) shelters for runaway and homeless youth are congregate facilities, preventing these populations from practicing social distancing.³⁵ Residents in these shelters share bathrooms, use communal eating spaces, and may sleep only three feet from the person in the next bed. Some of the dorm rooms in DHS shelters have dozens of people sleeping in them. Homeless clients have reported that there is a lack of soap, hand sanitizer, and personal protective equipment for residents and staff at shelters. While DHS has created isolation facilities in hotels for single adults diagnosed with COVID-19 or experiencing symptoms, the facilities are not available to everyone in shelter. Our clients with pre-existing conditions are terrified of remaining in congregate facilities; some have chosen to sleep on the streets rather than risk exposure in a congregate shelter.

Homeless New Yorkers on the streets face a different set of risks. While this population generally lacks access to food, bathrooms, showers, and toiletries, the issue has become more acute as businesses and food programs have shuttered due to the pandemic. DHS refuses to automatically offer isolation beds in hotels to this population and, in violation of CDC guidance and with the blessing of Mayor de Blasio and Governor Cuomo, the NYPD continues to push people out of subways and to “sweep out” temporary spaces people living on the streets may have found without offering any alternatives. As a result, our homeless neighbors are left without any sustainable or safe options during this pandemic, further exacerbating all other inequities faced by this segment of our State’s population. Unsurprisingly these practices for

³⁵ The Human Resources Administration-run domestic violence system also has some single adult shelter beds.

both sheltered and unsheltered homeless New Yorkers has significantly impacted their well-being, which is reflected in the most recent data on mortality rates.

Due to the inability of homeless New Yorkers to practice social distancing in congregate shelters and the homeless population's increased rates of pre-existing conditions, the mortality rate for homeless New Yorkers is significantly higher than that of the general population. The Coalition for the Homeless notes that, as of April 21st, the overall New York City mortality rate due to COVID-19 was 117 deaths per 100,000 people.³⁶ The age-adjusted rate for sheltered homeless New Yorkers is 184 deaths per 100,000 (57% higher than the New York City rate).³⁷

What this crisis – what every crisis – teaches us is that what homeless New Yorkers need is a path to permanent housing. At a recent press conference, Governor Cuomo was asked about how he plans to address the homeless crisis. His response was the same as it has been since the beginning of his administration: to deny the responsibility and ignore the problem. But Governor Cuomo's deliberate indifference to homeless New Yorkers has led to needless death. Now is the time for the State Legislature to provide homeless New Yorkers a path to a home of their own.

The Legal Aid Society urges enactment of Home Stability Support (HSS) S.2375 (Krueger)/A.1620 (Hevesi). The Legal Aid Society sees the financial and human costs of homelessness in the communities we serve every day. HSS is an essential component to addressing the homelessness crisis in an effective, financially responsible manner. Despite myriad efforts, the homelessness crisis has persisted throughout. As noted, in New York State,

³⁶ *Testimony of Coalition for the Homeless and The Legal Aid Society on Int. No. 1927, Requiring Private Rooms for Homeless Single Adults During COVID-19 Pandemic*, available at https://www.coalitionforthehomeless.org/wp-content/uploads/2020/04/CFH_Testimony_COVID-19_Hotels.pdf.

³⁷ *Id.*

over 150,000 men, women and children are homeless. Tens of thousands of others are doubled up in over-crowded or unsafe housing.³⁸ The public assistance shelter allowance for low-income New Yorkers is woefully inadequate -- a single person receives only \$215 towards rent, a couple only \$250, and a family of 4 only \$450 per month. Meanwhile, the Fair Market Rent (FMR) for a modest apartment in New York City ranges from \$1,665 for a studio to \$1,951 for a two-bedroom apartment.

Although New York City and a few other counties have state-approved rent supplement programs, the State has kept the subsidy unrealistically low and imposed onerous restrictions. In New York City, certain families who are homeless or at risk of homelessness may be eligible for a Family Homelessness and Eviction Prevention Supplement (FHEPS), which will provide up to a maximum of \$1,534/month for rent for a family of four. However, FHEPS only becomes available when a family is sued in Housing Court and at risk of eviction. Further, it provides no relief for families with no minor children, seniors, or singles as it only covers families with minor children. And, it is not available outside of New York City.

The Home Stability Support (HSS) bill would create a statewide housing supplement program providing payments of up to the Fair Market Rent. HSS would not be limited to families with minor children, it would not require that tenants be sued before they could receive help, and it would be tied to the FMR with annual adjustments, and it would generate higher and more realistic rent support levels than under City FHEPS.

Additionally, we urge the passage of the Housing Access Voucher Program S07628 (Kavanagh)/A9657 (Cymbrowitz). It is time for New York State to create a state-wide Section 8

³⁸ See *Homelessness in New York has become a vicious cycle, with state policies failing to match the scale of the crisis*, Say Yes to HSS (Paid for by Coalition for the Homeless), <https://sayyestohss.org/about-home-stability-support/> (last visited May 16, 2020) (“More than 80,000 households in the state are on the brink of homelessness.”).

program to provide low-income New Yorkers with access to safe and affordable housing. Now more than ever before, we need to use every tool possible to address the crisis of affordability and homelessness. Not only are there already several hundred thousand of homeless in New York, but even more families and individuals are now facing homelessness as a result of the collapse of the economy and will need rental assistance to remain in place, or to obtain affordable housing. We need a state-wide Section 8 program to provide that safety net/route to affordable housing for the currently homeless and the expected new homeless, victims of COVID-19. This is a public health imperative. This is no time for families nor individuals to lose their homes and find themselves living in crowded shelters or worse on the street.

Other states and localities have created their own Section 8 programs including our neighbors, Massachusetts and Connecticut -- it is time for us to join them. After years of federal austerity budgets, it is unrealistic for us to expect the federal government to expand the Section 8 voucher program, even though it has a proven track record of providing families and individuals with housing security.

The Housing Access Voucher Program would be administered by the public housing authorities throughout the state. Currently those public housing authorities administer the federal Section 8 program. Most of the provisions of the new Housing Access Voucher Program are similar to the federal Section 8 program, thus counties and localities would not be administratively burdened by having to train workers on a new program. Additionally, the voucher program includes a robust inspection requirement ensuring that public monies do not go to landlords renting unsafe housing.

The Housing Access Voucher Program will provide homeless and low-income New Yorkers with affordable housing vouchers, capping tenants' rent at 30 percent of household

income to increase housing stability as beneficiaries' incomes rise and fall. Like Section 8 vouchers, the voucher would cover between 90 percent and 110 percent of a community's Fair Market Rent. The vouchers are not time limited. Beneficiaries will keep the vouchers as long as they need housing assistance. The bill requires that at least 50 percent of all funding would go to individuals and families who are currently homeless. This would prioritize the most vulnerable New Yorkers and ensure that they would not be overlooked or left behind.

In a time in which the New York State Government decided that New Yorkers must remain at home in order to address this unprecedented health crisis, we must find a way to assist homeless New Yorkers to obtain a home of their own. Thus, we support the Housing Access Voucher Program S07628 (Kavanagh)/A9657 (Cymbrowitz) and urge its passage.

Consumer Protection

Debt collections and related lawsuits disproportionately affect Black and Hispanic communities.³⁹ In New York City, approximately 95 percent of people with default debt claims judgments entered against them live in low- or moderate-income neighborhoods, and more than half of those individuals lived in predominantly Black or Latinx communities.⁴⁰ At a time when almost half of all New Yorkers do not have even \$400 in cash to pay for emergency expenses, consumers across the state are now confronted with loss of income due to illness and workplace

³⁹ Wilner et al., *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers* (New Economy Project, Legal Aid Society, MFY Legal Services and Urban Justice Center, 2010), available at https://www.neweconomynyc.org/wp-content/uploads/2014/08/DEBT_DECEPTION_FINAL_WEB-new-logo.pdf; P.A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, *Loyola Consumer Law Review* 26, no. 2 (2014): 179-246, available at <https://core.ac.uk/download/pdf/56360427.pdf>; P. Kiel and A. Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*, *ProPublica*, Oct. 8, 2015, available at <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>.

⁴⁰ *Id.*

closures related to the pandemic.⁴¹ Job losses will undoubtedly continue as businesses remain closed.⁴² With little or no income, many consumers are already unable to pay their bills, including rent payments, medical bills, and car loans.⁴³ Many of these debts will eventually be bought by debt buyers who will use extraordinary means to seek legal judgments.

Over 95% of consumers are unrepresented in debt collection cases, and local *pro se* legal assistance programs for consumer debtors, such as the Civil Legal Advice and Resource Office (CLARO) and Volunteer Lawyer for the Day (VLFD), remain closed due to the ongoing public health emergency.⁴⁴ In housing court, while the majority of landlords are represented by attorneys, most tenants appear *pro se*.⁴⁵ Numerous default judgments are being enforced that were obtained by service of process on incorrect addresses.⁴⁶ The Society is also deeply concerned about the impact on unrepresented litigants of the NYS Office of Court Administration announcement of a new form of e-filing, the Electronic Document Delivery System,⁴⁷ and the reopening of courts to non-essential motion practice through e-filing.⁴⁸ In

⁴¹ Cargill, C., Maury, M., & Wimer, C. (June 2019), *Spotlight on Emergency Expenses*, available at https://robinhoodorg-production.s3.amazonaws.com/uploads/2019/06/EMERGENCY-EXPENSE-REPORT_6_19_FINAL.pdf.

⁴² NYS Department of Labor, New York Records Largest Drop in Private Sector Jobs Since 2009 (April 16, 2020), available at <https://www.labor.ny.gov/pressreleases/2020/april-16-2020.shtm>.

⁴³ John S. Kiernan, *67 Million Americans Anticipate Trouble Paying Credit Card Bills Due to Coronavirus*, WalletHub (March 18, 2020), available at <https://wallethub.com/blog/credit-cards-and-coronavirus-survey/72327/>; Congressional Research Service, COVID-19: The Financial Industry and Consumers Struggling to Pay Bills, (March 31, 2020), available at <https://crsreports.congress.gov/product/pdf/IN/IN11244>.

⁴⁴ The New York State courts estimated in 2014 that 98% of consumers were unrepresented in debt collection cases. See N.Y. State Chief Judge Jonathan Lippman, *Law Day Remarks: Consumer Credit Reforms 1* (transcript) (Apr. 30, 2014). That percentage has slightly decreased to 96% of consumers in 2017 following an increase in civil legal services funding; According to 2018 data from the New York City Civil Court, out of a total of 100,186 consumer credit filings, attorney answers were filed in only 3,892 actions -- which is a rate of representation of only 3.88%.

⁴⁵ New York City Office of Civil Justice, *Universal Access to Legal Services: A Report on Year One of Implementation in New York City*, (2018).

⁴⁶ Creditors obtained more than approximately 700,000 default judgments in consumer credit actions filed between 2008 and 2016.

⁴⁷ NYS Unified Court System. Notice to Public (5/4/2020), available at <https://iappscontent.courts.state.ny.us/NYSCEF/live/edds/eddsNotice.pdf>.

⁴⁸ NYC Admin. Judge Anthony Cannataro Directives and Procedures (DRP-208), (5/5/2020).

addition to the challenges this poses to *pro se* consumers trying to navigate the courts, we believe such measures violate existing state prohibitions on mandatory e-filing for unrepresented litigants.

Governor Andrew Cuomo must issue a moratorium on the enforcement of money judgments⁴⁹ and protect CARES Act stimulus payments from debt collectors,⁵⁰ under the authority accorded to him under Section 29-a of Article 2-B of the Executive Law. An increasing number of judgement debtors have approached the Society in the last few weeks seeking assistance due to frozen bank accounts and garnished wages. For example, a client who was working from home until recently discovered that her debit card was not working due to a restraint on her bank account by Capital One Bank. The client was the sole wage earner in her family until she was let go on March 20, 2020 as a result of her employer's inability to pay employees due to the current pandemic. The bank account contained her last paycheck and retirement funds that her disabled husband cashed, to pay for back due rent. Without access to her bank account she was unable to pay for food, medication, and rent for her family. There are numerous other similarly situated New Yorkers facing ongoing debt collection, and we expect a drastic increase in the immediate aftermath of this crisis.

Enforcement of judgments through bank account restraint, levies, and wage garnishment presents a dire situation for the hundreds of thousands of New Yorkers who have been impacted by the economic devastation in the wake of the pandemic. The hardship imposed by money judgments include a nine percent post-judgment statutory interest rate; systemic and systematic

⁴⁹ Executive Order suspending CPLR §§ 5222(a), 5230(b), 5231, 5232, and 5233 to prohibit enforcement of money judgments on consumer debt against natural persons; Modify CPLR § 5004 by tolling post-judgment interest on judgments on consumer debt.

⁵⁰ Modify CPLR §§ 5205(a) and 5205(l) to the extent necessary to exempt CARES Act stimulus payments from application to the satisfaction of a money judgment for consumer debt.

improper service of process, and failure to apply existing laws when vacatur of judgments are sought; and abusive debt collection practices in connection with financial services and products, such as credit cards, auto loans and leases, rental arrears, student loans, and medical debt. Many other jurisdictions and some agencies have temporarily suspended enforcement of judgments, but there remains a tremendous need to cease enforcement for the vast majority of the remaining judgment debtors.⁵¹ There must be efforts by New York State to protect already-vulnerable New Yorkers' limited income and savings from debt collection during the current pandemic.

New York State has an opportunity to protect New Yorkers from further financial hardship—with no financial outlay by the State—by lowering the interest rate that consumer debtors pay on judgments and accrued claims. The Society urges the passage of S.7946B, a bill to amend § 5004 of the New York Civil Practice Law & Rules (“CPLR”) to reduce the pre- and post-judgment interest rate for consumer debt actions from 9% to a variable rate based on the one-year Treasury bill rate. The current 9% rate imposes a heavy burden on low-income consumers because it is substantially above all market interest rates. The long-standing need for this law has been exacerbated by the COVID-19 pandemic, which has imposed unprecedented financial pressure on consumers. New York State set the existing judgment interest rate at 9% in 1981 when interest rates hit historic highs. In 1981, the one-year Treasury bill rate was approximately 14.5%.⁵² As of March 1, 2020, this rate was 0.89%.⁵³ To ensure that the interest rate on consumer debt judgments will not climb higher than existing market conditions, the bill

⁵¹ *Governor Cuomo and Attorney General James Temporarily Suspend State Debt Collection in Response to Coronavirus*. (March 17, 2020), available at <https://www.governor.ny.gov/news/governor-cuomo-and-attorney-general-james-temporarily-suspend-state-debt-collection-response>; U.S. Department of Education. *Secretary DeVos Directs FSA to Stop Wage Garnishment, Collections Actions for Student Loan Borrowers, Will Refund More Than \$1.8 Billion to Students, Families*, (March 25, 2020), available at <https://content.govdelivery.com/accounts/USED/bulletins/28317e2>.

⁵² Calculated based on data available as of April 1, 2020. Data located at FEDERAL RESERVE ECONOMIC DATA, FEDERAL RESERVE BANK OF ST. LOUIS, <https://fred.stlouisfed.org/series/DGS1>.

⁵³ *Id.*

adopts a variable rate used in federal law, namely the weekly average one-year constant maturity United States treasury yield. The bill also includes an interest rate cap of 3% to ensure that low-income consumers will not be unreasonably burdened, keeping the rate modest enough for consumers to fairly repay their debts. The proposed legislation will provide much needed relief to thousands of low-income New Yorkers trying to get back on their feet after the COVID-19 pandemic.

Immigration

The legislature should take additional steps to ensure that immigrants who are not eligible for cash assistance and SNAP have access to assistance to meet their needs. Even Safety Net Assistance, which is not subject to the strict federal rules on immigrant eligibility, is still only available to a fraction of the non-citizen New Yorkers who are eligible for other state benefits like State-funded Medicaid. Even fewer non-citizens are eligible for SNAP. All New Yorkers in need must have access to critical assistance, including food assistance. The legislature should either expand access to non-citizens or push OTDA to forge public/private partnerships to meet these needs.

We recommend that the legislature work with our Congressional delegation to ensure that new stimulus benefits be available to more immigrants. Immigrants are especially vulnerable in the COVID-19 health and economic crisis, working in industries on the front-lines of the COVID-19 response, such as health care and agriculture, as well as in industries facing severe economic harm resulting in job loss. Any new stimulus money (a) cannot include the Social Security number requirement, which precludes access to mixed-status and other immigrant households; (b) be issued in a more automated way that does not leave immigrants out; and (c) include the issuance of Disaster SNAP, for which all immigrants are eligible.

The COVID-19 pandemic also threatens to exacerbate the pre-existing crisis caused by Immigration and Customs Enforcement (ICE) actions at or near New York State courthouses. Between 2016 and 2018, the Immigrant Defense Project documented a sharp increase of 1736% in ICE courthouse enforcement in and around New York’s courts.⁵⁴ ICE operations in courts have numerous negative consequences for our state and its safety, including fewer immigrant victims seeking orders of protection against abusers, fewer immigrant witnesses willing to testify in cases, and an increase in abusers and landlords using ICE as a threat against victims.⁵⁵ As noted, the overwhelming majority of New York State’s population of immigrants without status are from Asia, South and Central America, Mexico, the Caribbean, and Africa.⁵⁶

ICE has continued to make arrests during the COVID-19 pandemic,⁵⁷ which can only have further damaging consequences once the courts fully reopen. It has been widely reported that the home isolation imposed due to the COVID-19 pandemic has led to an increase in domestic violence.⁵⁸ The threat of an arrest at court will deter victims from seeking orders of protection or testifying against their abusers—while also giving their abusers an additional threat to use against them. Additionally, at a time when more and more New Yorkers face housing insecurity, it is imperative that tenants are safe from arrest while appearing in housing court to fight unjust eviction proceedings. However, landlords have used the threat of an ICE arrest at

⁵⁴ Immigrant Defense Project, *Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State* 3 (Apr. 10, 2019), <https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguardingthe-Integrity-of-Our-Courts-Final-Report.pdf>.

⁵⁵ *Id.* at 21-36.

⁵⁶ Migration Policy Institute, *Profile of Unauthorized Population: New York*, Available at <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/NY>.

⁵⁷ *Updated ICE statement on COVID-19*, Mar. 18, 2020 (Last Reviewed/Updated Apr. 3, 2020), <https://www.ice.gov/news/releases/updated-ice-statement-covid-19> (last visited May 14, 2020).

⁵⁸ *See, e.g.,* Joht Singh Chandan, et al., *COVID-19: A Public Health Approach to Manage Domestic Violence Is Needed*, *Lancet Public Health* (May 8, 2020), <https://www.thelancet.com/action/showPdf?pii=S2468-2667%2820%2930112-2>.

court to deter tenants from asserting their rights.⁵⁹ Protection for these tenants will only become more important as the limited eviction relief that is currently in place expires.

For these reasons, The Legal Aid Society sued ICE to stop its unlawful courthouse arrests on behalf of an undocumented immigrant afraid to seek an order of protection against an abusive former partner, and several organizational plaintiffs. That litigation is ongoing, but the legislature can act now to stop this practice by passing the Protect Our Courts Act, A.02176/S.00425. The Society urges the passage of this legislation, which would expand the Civil Rights Law to prohibit ICE from arresting people, and those accompanying them, on their way to or from court, without a judicial warrant, and by ensuring that this right to attend court is enforced throughout the state.

Employment

This unprecedented public health crisis has essentially brought our economy to a halt, wherein every week we see record breaking unemployment claims.⁶⁰ The International Monetary Fund has now projected the global economy will experience its worst recession since the Great Depression.⁶¹ For families with little to no savings to fall back on, this has been, and will continue be, catastrophic as they try to keep food on the table, cover the cost of prescription drugs, or meet other expenses. Latinx workers bear a disproportionate burden locally, experiencing 32 percent of lost jobs compared to a 26 percent demographic share of all New

⁵⁹ Immigrant Defense Project, *Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State* 56-59 (Apr. 10, 2019), <https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguardingthe-Integrity-of-Our-Courts-Final-Report.pdf>.

⁶⁰ U.S. Department of Labor, Unemployment Insurance Weekly Claims, May 7, 2020, <https://www.dol.gov/ui/data.pdf>

⁶¹ Silvia, Amaro, *IMF says the world will 'very likely' experience worst recession since 1930s*, CNBC, April 16, 2020, <https://www.cnbc.com/2020/04/14/imf-global-economy-to-contract-by-3percent-due-to-coronavirus.html>.

York City private sector jobs.⁶² Further, as state unemployment systems face an unprecedented and overwhelming demand, millions more are expected to lose their sources of income.⁶³

The systemic problems of the New York State unemployment insurance (UI) program have been exposed during this crisis.⁶⁴ It is a program that has been underfunded, divested of resources, and antiquated in both its policies and process. The maximum benefit rate in New York is only \$504 per week, which is the lowest when compared against each and every one of New York's neighboring states⁶⁵. Further, New York's partial unemployment benefits law is particularly punitive, as it reduces a worker's benefits by 25% for each day of work done in a week, regardless of how many hours or money earned in that day. In addition, New York implements an unnecessarily punitive "forfeiture day" penalty that strips a worker's right to receive future benefits. The Legal Aid Society has long advocated for increasing the weekly benefit rate, a more rational approach to partial unemployment that takes into account actual earnings in a week, and the elimination of "forfeiture" penalties.

In addition to these systemic problems, New York has been unlawfully denying unemployment insurance to gig economy employees. Now that the federal government has created the Pandemic Unemployment Assistance (PUA) program for workers who are ineligible for UI, including independent contractors, the State seems to have taken the unlawful position

⁶² James A. Parrott & Lina Moe, *The New Strain of Inequality: The Economic Impact of Covid-19 in New York City* 15 (Apr. 15, 2020), The New School Center for New York City Affairs, https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5e974be17687ca34b7517c08/1586973668757/NNewStrainofInequality_April152020.pdf.

⁶³ Tony Romm, *Underfunded, understaffed, and under siege: Unemployment offices nationwide are struggling to do their jobs*, Washington Post, April 6, 2020, <https://www.washingtonpost.com/business/2020/04/06/unemployment-benefits-coronavirus/>.

⁶⁴ Haag, Matthew, *They Filed for Unemployment Last Month. They Haven't Seen a Dime*, The New York Times, April 17, 2020.

⁶⁵ New Jersey, for example, has a maximum benefit rate of \$713.00 per week. https://www.nj.gov/labor/lwdhome/press/2019/20200113_benefitrates.shtml

that Uber drivers, Lyft drivers, and other similar gig economy employees should get PUA instead of UI. Thus, the Department of Labor has not been processing the drivers' UI applications, but rather has steered them toward self-identifying as self-employed to request PUA benefits. While some have been approved for PUA, the State is still not issuing PUA benefits in a timely manner. This has led to many drivers receiving no benefits right now – even those who applied over a month ago. In 2018, a group of Uber drivers won a decision from the UI Appeal Board holding that all similarly situated Uber drivers were employees eligible for unemployment insurance. Although that consolidated decision was not appealed, the State has been unwilling to implement it and has treated each Uber driver application for UI as if there were no binding rules on the issue of employee status. Just this year in late March, the Court of Appeals in *Matter of Vega*⁶⁶ ruled that certain gig economy workers are employees for the purposes of unemployment insurance. The Department of Labor, however, is acting in opposition to this state's highest court' ruling. The legislature must make clear to the Department of Labor that this is unacceptable.

Undocumented workers must have a safety net in case of income loss. It has been made abundantly clear that undocumented workers are critical to this country's survival. Indeed, undocumented workers are critical to the "essential" businesses allowed to stay open during the quarantine, such as harvesting the food that feeds our country⁶⁷. Tragically, these essential workers are not eligible for unemployment benefits if they lost their jobs, and struggle to provide food for their families. We call on the passage of NY State Senate Bill S8277 which would

⁶⁶ (*Postmates Inc. – Commissioner of Labor*), – N.E.3d – , 2020 WL 1452612 (N.Y.)

⁶⁷ Jordan, Miriam, *Farmworkers, Mostly Undocumented, Become 'Essential' During Pandemic*, The New York Times, April 10, 2020.

provide relief for these workers along with others unnecessarily excluded from receiving unemployment benefits.

The legislature must take critical steps to protect workers who retain their employment. Government and employer decisions regarding working conditions must be based on science and worker safety, not the economy. There must be strong, unambiguous, and enforceable workplace safety rules established and mandated, and increased personal protective equipment (PPE) for all workers provided by employers. Workers must have stronger protections against workplace retaliation, especially when commenting or complaining about workplace safety, and it is essential that there is fast, free and widespread testing followed by tracking of infected workers along with their contacts so that the infected and those suspected to be infected can be excused from the workplace with pay and without fear of retaliation. Low-income workers are employed in industries that are the backbone of the economy: they cook and prepare our food, clean and maintain our hospitals, warehouses, offices and other workspaces, they deliver our packages, they build our buildings, they drive our vehicles, and they take care of our children and the elderly. The vast majority of these workers are people of color, immigrants, or formerly incarcerated individuals who are often pressured to work in unsafe conditions. Because these jobs are so low-paying, low-income workers cannot afford to take any time off and must work to survive. Their lives and the health and safety of their communities are at stake. Over 63% of all essential workers are Black and Latinx and 53% are immigrants; any failure to ensure that employers protect their health and safety will lead to even more disparate COVID-19 related fatalities in communities of color.⁶⁸

⁶⁸ <http://fiscalpolicy.org/wp-content/uploads/2020/04/Essential-Workers-Brief-Final.pdf>.

Public Benefits

The issues faced by the lowest-income New Yorkers who need public benefits have always been shaped by systemic discrimination based on race. Scholars and social policy experts have long traced the historic inadequacy of benefits like cash assistance, which are below federal poverty levels, to the racism underlying lines drawn between the deserving and underserving poor. Racist stereotypes about motivation to work have driven welfare work rules and punitive sanction policies. Limitations on immigrant eligibility for government benefits stem from nativist policies about to whom limited assistance should be available. Not only have such policies been shaped by racism, the policies themselves exacerbate existing inequities because they pose barriers to access and maintenance of enrollment that have disparate impacts on people of color, especially people of color with disabilities and chronic health conditions, insecure immigration status, and who are LGBTIA.

Given how these dynamics have been exacerbated by the COVID-19 economic and public health crisis, it is especially critical that the State of New York take action now to reform the delivery of public benefits to help to address such disparate impacts. Identifying and pushing for such reforms has always been the approach of The Legal Aid Society, and the need for reforms that expand access are now as important as ever. Not only has the COVID-19 pandemic caused widespread economic hardship resulting in greatly increased need for government assistance generally, it has hit communities of color disproportionately, resulting in an even greater need for access.⁶⁹

⁶⁹ More than half of adults in lower-income households and 44 percent of Black and 61 percent of Hispanic adults say they or someone in their household has lost a job or taken a pay cut due to COVID-19, according to a recent Pew Research Center survey. *See, e.g.,* Parker, Menasce, Horowitz, and Brown, *About Half of Lower-Income Americans Report Household Job or Wage Loss Due to COVID-19*, Pew Research Center (<https://www.pewsocialtrends.org/2020/04/21/about-half-of-lower-income-americans-report-household-job-or->

Since the beginning of the COVID-19 crisis, Legal Aid’s government benefits practice has been advocating at the federal, State and City levels to expand access to benefits both for clients currently in receipt of cash assistance and SNAP and also for those who found themselves suddenly unemployed as a result of the pandemic. On March 20, Legal Aid wrote to both the Governor and to the Commissioner of OTDA requesting reforms in policies and practices with respect to cash assistance and SNAP programs to increase community access to them. In response to the limitations imposed by the pandemic, we have adapted our intake system so that the client community can reach us now primarily through our Access to Benefits Helpline. Our recommendations are informed and guided through our Housing Hotline, which allows our clients to obtain the assistance they need and allows us to learn about the systemic problems they face. During the pandemic, Legal Aid’s benefits practice has also continued its leadership role in expanding access to benefits for immigrants, including through our ongoing litigation against the “public charge” immigration rule which punishes immigrants for using certain government benefits. *See Make the Road NY v. Cuccinelli, Make the Road NY v. Pompeo.* In April, we filed a motion together with the State and City of New York seeking an injunction to set aside the public charge rule during the remainder of the crisis so that non-citizens in New York and across

[wage-loss-due-to-covid-19/](#); Jan & Clement, *Hispanics are almost twice as likely as whites to have lost their jobs amid pandemic, poll finds*, The Washington Post, <https://www.washingtonpost.com/business/2020/05/06/layoffs-race-poll-coronavirus/> (finding that 20 percent of Hispanic adults and 16 percent of Black adults reported being laid off or furloughed during the pandemic, compared to 11 percent of white adults and 12 percent of adults of other races and ethnicities).

Food insecurity caused by the pandemic is also disproportionately impacting people of color. *See Llobrera, Food Security Impacts on People of Color Highlight Need for Aid*, CBPP (May 13, 2020), available at <https://www.cbpp.org/blog/food-security-impacts-on-people-of-color-highlight-need-for-aid> (setting forth statistics showing that food insecurity is spiking especially among people of color, with national survey responses from late April indicating that nearly 23 percent of households said the food they bought didn’t last and they didn’t have enough money to get more, with the rate for Black and respondents at 29 percent and Hispanic respondents at 34 percent).

the nation will not hesitate to use health care and other government benefits they are eligible for and need to get through the public health and economic crisis we face.

To help reduce the inequities based on race in the communities we serve, we urge the New York State Senate and Assembly to ensure that during the emergency, immediate needs of all New Yorkers are met. When New Yorkers lose a job and have no source of income and little savings, and existing support networks collapse as family-members and neighbors who normally can be relied on for help are fighting illness or economic uncertainty themselves, the immediate need for assistance, to purchase food, buy cleaning and basic hygiene supplies, becomes urgent fast. The existing Social Services Law stands in the way of the local agencies quickly meeting these needs. To eliminate these barriers the legislature should make a finding pursuant to NY Soc. Serv. L. § 153(8) that the COVID-19 is an emergency circumstance so that Safety Net Assistance (SNA) benefits are paid to New Yorkers without a 45-day waiting period and local districts can receive State reimbursement for these benefits. All New Yorkers in need should have access to critically needed benefits without enduring a waiting period. New applicants often have the most urgent needs for immediate help, presenting without any money to purchase food, cleaning, and basic hygiene supplies. They cannot be expected to wait.

The legislature should also modify the resource rules in the Social Services Law, which require the already vulnerable to expend further their limited resources. Under current resource rules, many temporarily unemployed New Yorkers cannot obtain critical assistance without first spending down even modest savings to meet the \$2,000 resource threshold (\$3,000 for households with a member over 60) and spending their 401(k) plan retirement savings and any tax refund. These rules set forth at Soc. Serv. L. § 131-n (1) should be modified – they do not make sense during these times of economic crisis. Other provisions that should be modified to

meet the reality of the COVID-19 emergency include: (a) increasing the amount of earned income that is disregarded and extending this disregard to applicants (Soc. Serv. L. § 131-a(8)(iii)); (b) repealing the 185% Rule (Soc. Serv. L. § 131-a(10)); and (c) repealing the Mortgage Lien which permits local districts to take a mortgage for the amount of public assistance paid (Soc. Serv. L. § §§ 106 and 360). Under current income rules, New Yorkers who lost some but not all work income face a barrier to access in the form of the 185% threshold requirement and the relatively low earned income. The 185% threshold automatically disqualifies from cash assistance any applicant with more than 185% of poverty-level income -- even if once that applicant had a benefits case opened, a portion of that income would be disregarded.

Relatedly, the legislature should exempt forms of federal assistance related to the COVID-19 pandemic from being counted as income for purposes of qualification for assistance by mandating the modification of OTDA General Information System Message 20 TA/DC035 (April 29, 2020). For example, some New Yorkers qualify for Pandemic Unemployment Compensation (PUC), a \$600 a week form of unemployment compensation which expires on July 31, 2020. OTDA just issued a new policy (GIS 20 TA/DC035 (April 29, 2020)) which requires PUC payments to be counted dollar for dollar as unearned income for Cash Assistance and SNAP. Many households are rendered ineligible for ongoing cash assistance because of the receipt of regular Unemployment Benefits. Those that remain eligible for Cash Assistance despite UIB receipt are often larger households with greater needs. OTDA's announced policy on the Pandemic Unemployment Compensation will bar their eligibility. The Legislature should reject this policy and instead mandate that OTDA adopt the sensible approach to these temporary

PUC benefits taken by HUD in its Section 8 program and not count these benefits as income for Cash Assistance benefits.

To make these changes meaningful immediately, the legislature should mandate standards to ensure that new recipients have the means to access benefits via Electronic Benefits Transfer (EBT) cards. The only way to access benefits is with an EBT card, but in New York City, mailing delays mean that new applicants for assistance are being subjected to long waits to receive these cards. During the COVID-19 emergency, the Legislature should mandate a standard for issuance by mail such that after a local district approves an application for benefits, an EBT card must be mailed no later than the next business day via express mail. The Legislature should also require that local districts provide for same-day issuance of EBT cards at each location at which applications for Cash Assistance and SNAP benefits are taken.

The legislature should also exercise its oversight authority over OTDA to mandate real-time data reporting by local districts so that the adequacy of service delivery can be monitored and resources can be dedicated to addressing any problems. Timely data is essential to effective oversight by the State agencies and legislature, as well as local government. Although local districts do report data on applications, it is produced months later. Accordingly, local districts should be required to produce data on a weekly basis, so benefit issuance can be monitored adjustments made to improve service delivery. Transparency is also critical in our efforts to ensure agency accountability to our clients.

The legislature should take steps to maximize federal dollars coming to New York and conserve State resources. Congress has already passed relief legislation, and more is expected to be on the way. New York State is a leader in COVID-19 response by necessity given how hard the State has been hit by the virus, and it needs to show leadership in pushing Congress for more

assistance for New Yorkers, and to keep current forms of assistance in place for as long as possible.

The legislature should also work with the federal government to secure additional methods to further automate access to stimulus payments for all eligible New Yorkers. Many SNAP recipients who are eligible for the recovery rebate will not receive it because they are unable to navigate the IRS non-filer online tool independently for a variety of reasons. We ask that the State communicate with the federal government regarding its SNAP recipients so that automatic payments can be made.

Health

The lack of health equity for low-income New Yorkers – who are mostly people of color – results from a history of structural racism including the legacy of slavery and racist immigration policies. The coronavirus has laid bare these inequities and exposed the infrastructure that was in place for communities of color to be devastated by this crisis. Many of the preexisting conditions and comorbidities that commonly result in severe illness or death from COVID-19 are connected to poverty and for communities of color, environmental and medical racism.

The vast majority of our clients are Medicaid recipients who in New York are mostly Black and Latinx.⁷⁰ Medicaid is a critical tool that the state has to protect public health during this crisis. Federal legislation has thankfully required New York to suspend Medicaid closures and maintain eligibility levels. A federal waiver has allowed for loosening of certain requirements for Medicaid applicants as well as facilitation of processing of applications for the city and state.

⁷⁰ <https://www.kff.org/medicaid/state-indicator/distribution-by-raceethnicity-4/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

As the state experiences a tremendous increase in applications for public benefits, including Medicaid, ensuring access to and continuity of care of Medicaid services is crucial. We urge the legislature to expand automatic recertification for Medicaid. A bill to do so, A. 9017/ S. 7523, passed the legislature last year as A. 7578/S. 5485, but it was vetoed by Governor Cuomo. It seeks to stop the cycle of “churning” eligible people off of Medicaid by automating the Medicaid recertification process for four groups: 1) Managed Long Term Care (MLTC) enrollees, 2) Mainstream managed care members receiving personal care or consumer-directed personal assistance services, 3) Medicaid enrollees in the Aged, Blind, and Disabled Category without excess income, and 4) Medicare Savings Program (MSP) recipients. By automating the annual Medicaid “renewal” process, it will prevent the erroneous termination of Medicaid eligibility for these vulnerable populations. When Medicaid is cut off because of a glitch in the renewal process, the individual is automatically disenrolled from their Managed Long Term Care (MLTC) plan, resulting in the loss of life-saving home care benefits. As a result of federal Family First Coronavirus Response Act, all Medicaid discontinuances are currently suspended. This bill will provide continued Medicaid coverage going forward for particularly vulnerable populations, which will allow them to receive uninterrupted care in their communities. It will prevent these individuals from entering congregate care facilities such as nursing homes that will suffer devastating impacts, such as chronic understaffing, after this crisis has passed.

The state must also expand access to Medicaid and health care to low-income and undocumented New Yorkers. To that end, we urge the legislature to expand access to health insurance and services through programs for all New Yorkers, including those who are undocumented. We support legislation that would raise the Disabled, Blind, and Aged Medicaid income limit to 138% of the Federal Poverty Level (FPL) and eliminate the resource limits for

this population to align the eligibility requirements for disabled and senior Medicaid enrollees with the rest of the Medicaid population. Because of a technical change in their Medicaid eligibility category that imposes more stringent eligibility requirements, many Medicaid enrollees who become certified disabled or turn age 65 often lose Medicaid coverage when they need it most, creating extreme economic and medical hardship. Under the Affordable Care Act, most of the Medicaid population, including children, parents and caretaker relatives, and most other adults under age 65, are income eligible for Medicaid up to 138% FPL and they have no resource test for Medicaid eligibility. But the Affordable Care Act did not change the requirements for the Disabled, Blind, and Aged Medicaid population, who are only income eligible up to 83% FPL. This population is also subjected to a resource limit. Thus, when these individuals change Medicaid categories by virtue of disability or age, they often lose coverage due to these more stringent eligibility requirements. As a result of federal Family First Coronavirus Response Act, none of the individuals who would usually fall victim to this unfair scheme will lose Medicaid coverage during the public health emergency. This legislation would preserve this policy, which prioritizes continuity of Medicaid coverage for particularly needy populations, promoting stability, and making Medicaid in New York more fair and equitable. Additionally, the legislature should pass A5974/S3900, which would expand the Essential Plan to provide free or low cost health insurance to all New Yorkers up to 200% of the federal poverty level regardless of immigration status. The legislature should also pass the New York Health Act, A.5248/S.3577, which would establish universal health care for all New Yorkers.

We have also proposed legislation that would address several of the most egregious aspects of the Medicaid overpayment investigation and collections process in New York State. We would add to this ensuring that the continuing Medicaid benefits resulting from the federal

requirements of the Family First Coronavirus Response Act are immune from recovery by the state and local districts if it is later determined that an individual was not otherwise eligible during the time period of the crisis. In many overpayment cases, the beneficiary was eligible for Medicaid for all or part of the period of the investigation. Those facing investigations frequently are pressured into signing settlement agreements they cannot afford or are subject to default judgments when settlement agreements are not reached and they are sued in civil court. Those impacted are often immigrants, those with limited English proficiency, and the working poor. The proposed legislation would: limit the amount of recovery to the amount that a recipient was over-income or over-resourced if that amount is less than the cost of assistance; require an attestation by a government official at the time of the filing of a complaint or the signing of a settlement agreement that the recipient's lack of eligibility had been adequately established and documented; establish a two-year grace period for those who become ineligible for Medicaid not because of any change to income or resources, but because their category of Medicaid eligibility changed; ensure that individuals who can prove financial hardship are protected from collections or are able to pay a reasonable amount that does not threaten their ability to provide for basic necessities; establish a two year statute of limitations on recovery in overpayment cases; and lower the maximum interest rate to three percent.

On March 13 we sent a letter to the State Department of Health along with partner agencies to make a series of asks related to protecting our clients and preserving their Medicaid eligibility and access to services, especially home care and other crucial ongoing care for our most vulnerable clients. We have continued our outreach to the state with extensive follow-up through letters, email, phone calls, and in meetings. The state has taken numerous positive steps, but there is still work to be done to affirmatively address the disparate impact of the virus on

communities of color. We are very grateful for the leadership New York showed in extending emergency Medicaid, which is available to qualified New Yorkers regardless of their immigration status, to cover COVID-19 testing, evaluation and treatment. This is particularly important as immigrant communities have been hit hard by the virus but shut out of many relief measures. We ask the state to continue to work with us and to open lines of communication that allow us to provide our unique and valuable input.

Much of the focus during this crisis has understandably been on hospitals and hospital workers. However, home care workers are also on the front lines. They are more likely to be exposed to the virus and are caring for vulnerable people, many of whom are at high risk for severe illness or death if infected with the coronavirus. Home care workers, who are overwhelmingly immigrant women of color, have reported that they do not have the necessary PPE, putting them and the people they provide service to at higher risk for infection. As a result, we have seen a sharp increase in cases reflecting the shortage of home care workers. In some cases, aides are ill and not able to come to work, or they are scared to work because of the lack of PPE or because the patients themselves are refusing services because of the lack of PPE. When our clients' aides don't show up, they are faced with impossible choices between going without essential care or going to a nursing home or hospital where they are at much greater risk of exposure.

In addition, the state should immediately suspend all discontinuances and reductions of home care and other long-term care services. Even in this time of crisis, we have heard numerous reports of Medicaid managed care plans attempting to cut hours of care. New York must ensure that individuals are safe at home with necessary services and supports, and there is no reason that care reductions should be allowed to go forward. This will help to control the spread of the

disease by promoting social distancing and preventing hospitalizations and admissions into nursing homes.

Congregate care settings, including nursing homes, adult homes, supportive housing, group homes for people with psychiatric and developmental disabilities, and psychiatric hospitals are deadly environments for extremely vulnerable New Yorkers. The rate of death of residents and staff of congregate care facilities is overwhelming and heart breaking. As of April 23, 2020, 10,000 residents and staff members of long term care facilities have died from COVID-19.⁷¹ More recent data shows that more than 2,300 New York nursing home and adult care residents have died from COVID-19, with another 2,500 presumed to have died from the virus.⁷² An NPR report showed the only distinguishing feature of nursing homes in New York that reported the highest number of deaths is the percentage of people of color who live there.⁷³ While we applaud the recent change to testing requirements for staff and the promise to make those tests available, New York must take responsibility for this tragedy and continue to take measures to protect the residents and staff of these facilities.

We ask that the legislature press the relevant state agencies to continue measures to: minimize required in-person contact with city and state entities for those applying for and renewing Medicaid benefits; encourage continuity of and ease of access for Medicaid coverage; encourage flexibility and safety in accessing health care services; ensure access to and continuity of home care and long-term services in the community; improve conditions within congregate care facilities; and acknowledge the severe financial hardship New Yorkers are and will be facing.

⁷¹ <https://www.kff.org/medicaid/issue-brief/state-reporting-of-cases-and-deaths-due-to-covid-19-in-long-term-care-facilities/>

⁷² https://www.health.ny.gov/statistics/diseases/covid-19/fatalities_nursing_home_acf.pdf

⁷³ <https://www.npr.org/2020/04/21/839522324/npr-analysis-of-covid-19-deaths-at-new-york-nursing-homes>

Racially Disparate Policing

Black and Latinx communities are experiencing the most violent response to COVID-19. By heavily relying on law enforcement as the primary method of community engagement, during a public health crisis, New York State has failed communities of color. People of color have a justified fear and mistrust of law enforcement rooted in historical race-based police violence and abuse. Law enforcement has consistently criminalized, exercised a reckless lack of empathy, and overstepped legal boundaries when interacting with Black and Latinx people. During this pandemic, these communities are being “served” by the most consistently harmful agencies to them. Essentially, we are seeing a huge gap between the desire to support Black and Latinx communities with the vital information/resources they need to survive this pandemic and what the government is doing, criminalizing them for not having access to basic resources and knowledge. In New York City, NYPD reports roughly 120 arrests for social distancing between March 16 and May 5 throughout the five boroughs as a whole and of these arrests, 68% of those detained were black and 24% of them were Hispanic.⁷⁴ Over 92% of all police interactions for social distancing was enforced in Black and Latinx communities. New York must do better and the first step is to remove law enforcement from engaging in social distancing criminalization.

In New York City, Mayor DeBlasio has taken the first step to addressing the racial disparities in policing by publicly calling for the NYPD to reduce its enforcement of social distancing; however, that does not go far enough. New York City, and every locality must significantly increase the use of information tactics to ensure that community members understand how to protect themselves from contracting and spreading COVID-19. The State must repeal its antiquated anti-masking law, New York Penal Law § 240.35(4), to ensure that no

⁷⁴ <https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html>

local police can enforce this provision which prohibits masked people from congregating with other masked people. The State must also ensure that masks are available to low-income communities of color with clear instruction on how to use the masks to keep themselves safe. New York must develop more exhaustive COVID-19 prevention guidance, so people know how to navigate other COVID-19 related issues like living with others safely, how to take public transit, and how to treat the illness if you live alone or with others who are not ill, etc. New York needs public health advisories that are robust and targeted to communities of color who might not have consistent access to the internet. New York must have a public health response instead of responding with criminalization.

New York must address police violence and how it negatively impacts communities of color. As social distancing becomes the newest low-level police encounter pretext, we must remember how oftentimes officers escalate the interaction into violence during those encounters. This is a longstanding problem for law enforcement, especially the NYPD. Police encounters for quality of life offenses can lead to unnecessary escalation with often tragic consequences. We need look no further than Eric Garner's case, or the several press stories from the past two weeks showing officers ripping a young boy away from his family for selling candy, or violently assaulting a mother in front of her children for allegedly incorrectly wearing her mask, or the Legal Aid attorney who was arrested with her puppy for lawfully videotaping the police while they unlawfully and violently searched young Black men in their community. These incidents are not aberrations, they reveal a deeper more endemic problem within the NYPD and many other law enforcement agencies throughout New York State. Between January 2015 and June 2018, the City has settled at least 30 lawsuits involving the use of chokeholds by the NYPD. During that same time period, the New York City Civilian Complaint Review Board ("CCRB") received

at least 582 allegations of NYPD officers using chokeholds against civilians. Between January 2015 and June 2018, the City has settled at least 14 lawsuits involving the use of Tasers by NYPD officers. On May 3rd, Officer Francisco Garcia, who has at least 7 law suits brought against him for police misconduct, was recorded using his taser to threaten civilian bystanders before he brutally assaulted Donni Wright during an alleged social distancing enforcement.⁷⁵

The public needs to know the officers involved with these violent cases, and those officers must be held accountable for their actions. Advocates and legislators have been pushing for more transparency in policing. We urge the New York State legislature to pass the Police Statistics & Transparency (STAT) Act, A. 05472/S. 1830 (Lentol/Hoylman) and to repeal 50-a Act, A. 2513/S. 3695 (O'Donnell/Bailey). These two pieces of legislation can help New York have safer communities. Police officers who have been shielded from accountability need to be forced out of the shadows and held accountable. Communities of color are at higher risk for police violence when bad actors are able to hide in the ranks. During this pandemic, we are seeing escalating police violence and hyper-transmission of a deadly virus in communities of color, we must intervene now to help protect communities of color.

We are also encouraged by the foresight and leadership that Assemblymember Aubry and Senator Bailey have shown in introducing the Reduce Unnecessary Arrests for Non-criminal Offenses Act A. 4053/S. 2571 (Aubry/Bailey). This legislation moves New York in the right direction, especially during these unpredictable times. Sadly, law enforcement has proven to be extremely predictable in their misuse of authority as it pertains to people of color. Communities of color have been the hardest hit by COVID-19, any more criminalization and needless

⁷⁵ <https://gothamist.com/news/nypd-officer-seen-beating-man-social-distancing-arrest-has-history-alleged-brutality>

interactions with law enforcement puts Black and Latinx people at further risk. We strongly encourage the Assembly and the Senate to pass these crucial pieces of legislation now.

Additionally, as we attempt to reduce needless racially disparate criminal enforcement during COVID-19, it is imperative that New York State pass the Marijuana Regulation and Taxation Act (MRTA) A. 1617C/S. 1527C (Peoples-Stokes/Krueger). This bill will significantly reduce low level criminalization in communities of color. In 2018, 93% of the people arrested by the NYPD for marijuana possession in January-March of 2018 were New Yorkers of color. Of the 4,081 arrests for criminal possession of marijuana, only 287 of those arrested were white people, compared to 2,006 black people and 1,621 Latino people.⁷⁶ It will also have the added benefit of providing much needed financial resources into the same communities that have been disproportionately targeted during the war on drugs. These are many of the same communities that have been the hardest hit during COVID-19, both in fatalities and the number of people unemployed. As the State contemplates moving towards more austerity in light of COVID-19, it is crucial that we do not compound the economic harm by stripping low income communities of much needed resources, when we barely addressed their need prior to COVID-19. It is crucial for the safety of communities of color and for the financial well-being of all low income communities that the MRTA is passed during this legislative session.

Incarceration Disproportionately Impacting Black and Latinx New Yorkers

The horrifying consequences of the racial inequities in New York City are perhaps most strikingly apparent in our criminal law system. Black and Latinx people are more likely to be stopped and arrested and experience the personal costs and burdens associated with defending a

⁷⁶ Innocence Project Staff, *Racial Disparities Evident in New York City Arrest Data for Marijuana Possession*

criminal accusation.⁷⁷ Not surprisingly, disproportionate arrests lead to gross overrepresentation in the City’s jails and State prisons, places often lacking in adequate medical care, programming, and supports during the most normal of times. But during this pandemic, people of color – many already with pre-existing medical conditions resulting from lack of access to medical care⁷⁸ – now possibly face serious illness or death because the necessary risk mitigation policies are effectively impossible in jails and prisons.

The numbers speak for themselves. While the population of people incarcerated in New York City jails is at a record low, people of color continue to be overrepresented in the jail population. As of April 28, there were 2,207 Black people in the custody of the Department of Correction (DOC), accounting for 58% of the total population.⁷⁹ Despite the gross inequities existing in the processes that put people in the City jails, the State legislature recently voted to rollback essential bail and discovery reforms enacted last year. These rollbacks will undoubtedly lead to putting more Black and Latinx people behind bars along with exposure to a serious risk of illness and death from COVID-19. DOC has reported three deaths due to the pandemic and, on May 16, 481 people in DOC custody have either been confirmed positive for the virus, and 66

⁷⁷ For example, Black and Latino men account for five percent of the City’s population, but accounted for 38% of reported stops between 2014 and 2017. *See* Stop-and-Frisk in the de Blasio Era (NYCLU, March 2019).

⁷⁸ Due to historical environmental racism, housing injustice, and racially biased inadequate healthcare, most communities of color in New York City have increased rates of asthma, diabetes, heart disease and other comorbidities that increase the risk of mortality if individuals contract COVID-19. *See generally*, Hazar Kilana, ‘Asthma alley’: why minorities bear burden of pollution inequity caused by white people, *The Guardian* (April 4, 2019), available at <https://www.theguardian.com/us-news/2019/apr/04/new-york-south-bronx-minorities-pollution-inequity>; Kathleen Culliton, *These Moldy, Pest-Infested NYC Neighborhoods See Asthma Spike*, Patch (Jan. 22, 2019), available at <https://patch.com/new-york/brooklyn/these-moldy-pest-infested-nyc-neighborhoods-see-asthma-spike> (“Asthma rates spike in central Brooklyn and Bronx neighborhoods where a large number of buildings suffer from infestations that residents usually discover only after moving in.”); Austin Frakt, *Race and Medicine: The Harm That Comes From Mistrust* (Jan. 13, 2020), available at <https://www.nytimes.com/2020/01/13/upshot/race-and-medicine-the-harm-that-comes-from-mistrust.html>; Death Rate by Race/Ethnicity Group, NYC Health (last accessed April 30, 2020), <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-deaths-race-ethnicity-04082020-1.pdf>.

⁷⁹ This information is derived from the data provided on the New York City Open Data website.

people are under observation by Correctional Health Services (CHS).⁸⁰ Already, 8.5 percent of people incarcerated in City jails have confirmed COVID-19 infections, a percentage almost 5.9 times higher than New York City, 7.4 times higher than New York State, and 42 times higher than the rest of the country.

The data from the State Department of Corrections and Community Supervision (DOCCS) is similarly dire, and increasingly so, with DOCCS failing to take adequate measures to release people who are at risk. According to 2019 data, 22,245 (or 48%) of the 46,037 in state custody are Black. Of these, 4,561 (or 20.5%) are at least 50 years old and 1,920 were most recently admitted for technical parole violations.⁸¹ To date, 16 people incarcerated in state prisons have died and 461 have tested positive for the virus.⁸² These numbers are rising daily and do not reflect robust testing for example

The Legal Aid Society's Criminal Defense Practice is at the forefront of protecting its clients – over 92% of whom are people of color – from the unavoidable dangers of incarceration as the virus continues to spread through Rikers and the State prison system. Our staff have filed countless motions seeking release of medically vulnerable clients throughout the five boroughs and in upstate counties where prison facilities are located. But more can be and must be done. The State must pass the Less is More: Community Supervision Revocation Reform Act S1343C/A5493B (Benjamin/Mosely). A major driver of mass incarceration is the parole system. New York reincarcerates more people on parole for technical violations than any state in the country except Illinois. The racial disparity is stark: Black people are incarcerated in New

⁸⁰ https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_4_28_2020.pdf

⁸¹ DOCCS data is available at <https://data.ny.gov/Public-Safety/Inmates-Under-Custody-Beginning-2008/55zc-sp6m/data>.

⁸² <https://doccs.ny.gov/doccs-covid-19-report>.

York City jails for technical parole violations at more than 12 times the rate of whites, and the Less is More Act could help to address that.

Every day, countless numbers of people are hauled into Rikers Island for indefinite periods of time, to face allegations of wrongdoing that do not amount to criminal activity. While those people languish in jail for months waiting for a hearing, all of the strides they've made in the community such as gaining housing or employment are lost. This bill will ensure that people on parole will not be reincarcerated for minor technical violations, and that any period of incarceration that results from other violations is severely capped. Additionally, Governor Cuomo must grant many of the clemency applications that have been languishing in his office.⁸³ Public health experts have long stated that prisons and jails are dangerous places during a pandemic, we must significantly reduce the prison population throughout New York immediately. Approximately, 41% of New York's prison population is between 40-54 years old, many of these individuals have severe chronic health conditions that make them even more vulnerable to COVID-19.⁸⁴ We cannot afford to wait for the crisis to get worse in the prisons before New York takes meaningful action. We must act now and release as many people who are at risk from our prisons before their sentences become death sentences.

The State must take steps to ensure that more vulnerable people are released. New York State must pour resources into alternative means of achieving justice, and not just electronic monitoring; rather, tools for transformative justice need to be funded and spread throughout New York State. Prisons and jails have always been dangerous to the health and safety of communities of color, and now with COVID-19, sentencing people to incarceration could possibly be a death sentence or lead to long-term health consequences for them. We must be

⁸³ <https://www.gothamgazette.com/opinion/9344-governor-cuomo-clemency-negligence-coronavirus-prisons>

⁸⁴ <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs>

creative in seeking a more just system recognizing that criminality is not an inherent personality trait; but rather, it is a byproduct of systemic failures and marginalization.

Surveillance and Criminalization of People of Color

As New York begins to envision our COVID-19 new normal, there is increasing concern around the use of technology, surveillance, and data in tackling the pandemic. New Yorkers must be creative in using tools that can help curtail the transmission of the virus, and also protect the privacy rights of every New Yorker. Already private corporations, law enforcement, and some government agencies have exploited the use technology against communities of color. The increase use of rogue DNA databanks, the expansion of facial recognition technology, and the long history of medical racism and the deceptive use of medical treatment on marginalized communities, are glaring warning signs of the potential danger of New York digitalizing our COVID-19 response.

As State and local officials embark on the testing and contact tracing phases of Covid-19 response, we call on the Legislature to enact S6009/A7818, S7572/A9767, and A10246, laws that protect genetic, digital and biometric privacy. The same Black and Latinx community members disproportionately impacted by this virus, also are historically the victims of over-criminalization and over-surveillance by law enforcement. This targeted policing erodes trust that the government is an honest broker—especially when it comes to safeguarding private information. To begin to repair this trust and encourage participation in testing and tracing, the Legislature should clarify that cities cannot maintain rogue DNA indexes, and also pass new laws to protect digital and biometric privacy.

As to DNA, State Law (Exec. L. 995) is clear that only the State can permanently store people's genetic information in a DNA index. But relying on a perceived ambiguity in the law,

New York City's Department of Health and NYPD created an unregulated, local DNA index. This index contains more than 32,000 people, including people who have never been convicted of crimes, children as young as 12, and innocent people whose DNA was taken surreptitiously during police encounters. At least one wrongful arrest resulted from this unregulated index.

Despite calls from advocates, as well as the New York City Council to provide information about the racial or ethnic makeup of the profiles in its DNA index, the City Department of Health and NYPD repeatedly refused. The refusal to provide data is telling and suggests not just a large, but an enormously gaping, disparity. We know that more than 360 Black men had their DNA unlawful and coercively stolen from them by the NYPD for inclusion in the index during a Queens murder investigation. The NYPD also appears to have targeted Black young boys in Harlem and the Bronx as part of other investigations and "sweeps" of housing projects, also for the purpose of warehousing their DNA. We know that on average every year, Black and Latinx people make up approximately 82% of all NYPD arrests. We know that the vast majority of the DNA collections take place prior to individuals being convicted of a crime. Most of the collections take place in the precinct sometimes prior to arrests and almost always prior to arraignment. It is obvious, even without the NYPD or City DOH providing the racial breakdown of the DNA index, that the vast majority of the local DNA Databank is made up of Black and Latinx people.

Rogue and unregulated DNA indexing creates an environment in which people of color rightfully feel distrust and paranoia towards law enforcement and the state in general. It ensures that communities of color will continue to be marginalized and mistreated by the state actors who are allegedly there to protect and serve them. It is, therefore unsurprising, given these unregulated and secretive tactics for handling biological material, that many community

members have told us they are reluctant to give their saliva or blood to officials for government-sponsored testing. A critical way to rebuild that trust would to enact S6009/A7818, which clarifies the current Executive Law to make clear that rogue City DNA indexes are not allowed, and that children and people who haven't been convicted of crimes have not forfeited their—and their families'—genetic privacy merely by cooperating with the City DOH or NYPD.

The pandemic also has seen disturbing calls for relying on privacy-invasive solutions to this public health crisis. The Legislature also should enact S7572/A9767, placing a moratorium on the use of facial recognition and other biometric surveillance technology by law enforcement until appropriate protections have been developed, and A10246 to ban the use of "reverse location search warrants", sometimes referred to as "geofence search warrants," to prohibit the use contact tracing as a method to collect or use location information. In the COVID era more than ever, the potential for abuse of this technology is apparent.

Facial recognition technology is invasive and unreliable. The effects of its failures are more acutely felt by people of color. There is a heightened error rate in the identification of people of color by facial recognition, making it more likely people who are not white will be misidentified. This serves to exacerbate the already prevalent racial bias in policing. Law enforcement glosses over the glaring flaws in the technology and its potential outcomes. For example, the NYPD claims that a possible facial recognition match is not enough for probable cause and, therefore, alone not enough to make an arrest. This is a seemingly intentional oversimplification of the issues. Arrests are not the only harmful encounters people of color have with the police, people are still stopped and frisked and searched. Since the use of facial recognition is less likely to be accurate for people of color, possible matches will result in more people of color subjected to random negative police contact.

Pending in the Senate and the Assembly is a moratorium on biometric surveillance, including facial recognition. It is necessary that the Legislature pass this bill to prevent further disparate treatment of people of color and to require a comprehensive study on the effectiveness and impact of the use of facial recognition and other forms of biometric surveillance. With discussions of potential methods of ensuring people positive for COVID-19 refrain from contact with others, including tracking biometric identifiers like facial recognition and thermal imaging, the need for a moratorium is greater than ever. We should not embrace a flawed technological proposal masquerading as a solution, especially when its effects are so damaging.

Similarly, we have numerous privacy and effectiveness concerns about the intended use of electronic contact tracing and other forms of surveillance in the fight against COVID-19. New York State has not publicly released a finalized plan yet but likely the success of any electronic contact tracing plan will rely upon voluntary adoption by a significant percentage of the population. As a result, the plan will partly depend on people of color from overly policed neighborhoods agreeing to participate.

The over-surveillance of communities of color has led to a healthy distrust of government attempts to collect data. There must be enforceable legal safeguards if the State wishes for people to be willing to participate in electronic contact tracing. Promises are not sufficient. Once the data is created and collected, there is nothing short of a statute to prevent law enforcement from accessing it and using it against the program's participants. Pending in the Assembly is a bill to prohibit reverse location searches, sometimes also referred to as geofenced searches. A reverse location search provides records and data on all electronic devices in a geographic area at a certain date and time, the vast majority of which are not relevant to the investigation. There are multiple methods that are used, including obtaining data from Bluetooth signals. If the COVID-

19 electronic contact tracing is truly meant to only combat the pandemic then there is no reason we should not prohibit law enforcement from accessing that data. This will not solve the racial disparities in medical treatment or COVID-19 related surveillance but it will mitigate one of the significant known concerns and alleviate some of the anxiety people may have in participating in contact tracing.

Juvenile Justice

The COVID pandemic has revealed the capacity of the juvenile justice system to function in a more just and less punitive fashion. Because the juvenile justice system, like the criminal justice system has a disproportionate, destructive impact on communities of color, these steps forward during the COVID pandemic must be acknowledged and built upon so that NYS can move towards greater justice. In recognition of the dangers associated with the COVID-19 pandemic to youth and staff in congregate settings, NYC made concerted efforts to release youth it deemed appropriate from detention and placement beginning in March. Since that time, we have seen a precipitous drop in the number of youth arrested and detained by the courts. This reduction makes apparent that much adolescent behavior can be managed through support and services rather than arrests and prosecutions without any harm or risk to the community.

Relatedly, the number of children held in juvenile detention awaiting disposition of their cases has plummeted. For example, last month, a total of four youth charged as juvenile delinquents (JDs) were held in secure detention across all of NYC; another eleven youth charged as JDs were held in non-secure detention. In contrast, in January 2019, the average daily census of youth charged as JDs and held in detention was 39.⁸⁵ The recent census thus represents a drop of more than 50%. This data reveals that many youth of color, who make up a disproportionate

⁸⁵ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/02.pdf>

and overwhelming majority of youth in the juvenile justice system, have been previously held unnecessarily in detention. Needless detention exposes youth to trauma, prevents youth from engaging in rehabilitative services and has a long term negative impact on youth. The State must encourage the utilization of off-ramps state-wide that steer youth from involvement in the juvenile justice system.

Appalling and longstanding racial disparities exist in NYC's juvenile justice system-- justice involved children and teens are almost exclusively poor, and African-American or Latino. Additionally, many youth of color have experienced trauma and at least one significant issue beyond poverty that causes instability in their lives. These injustices are rooted in racial inequities that permeate society; the juvenile justice system included. According to the Administration for Children's Services (ACS) Detention Demographic Data for FY 19, 66.9% of all New York City youth admitted to secure detention facilities in 2019 self-identified as black and 28.5% identified as Hispanic; similarly, 67% of those admitted to non-secure detention facilities identified as black and 26.7% as Hispanic.⁸⁶ Nearly 100% of all NYC youth admitted to non-secure and limited secure placement (youth held pursuant to a disposition of their Family Court case) are African-American or Latino.⁸⁷

Passage of the Juvenile Interrogation Bill S4980-A/A6982-A (Bailey/Joyner) is more important now, in the midst of the state's struggle with the COVID-19 crisis, than ever before. Standing on its own the rationale for passage of the Bill is overwhelming. Youth, and particularly youth of color, are disproportionately affected by the myth of the knowing, intelligent and voluntary waiver of the constitutional right to remain silent in the face of a custodial interrogation

⁸⁶ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2019/LL44DDRFY19.pdf>

⁸⁷ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2019/LL44CTHDReportFY19.pdf>

by law enforcement. Developmental and neurosciences have made it clear that as a class, adolescents are unlikely to understand the nature of their right to remain silent, are unlikely to appreciate the consequences of waiving that right, and are most susceptible to a multitude of coercive forces that might influence their decision. Only by requiring that a youth first consult with an attorney can we be certain that any waiver of these rights is valid. Our goal during COVID-19 is to prevent people from being needlessly incarcerated. Providing young people with access to an attorney prior to interrogation could drastically prevent future wrongful convictions like Central Park Jogger case, and allow for fewer young people to be incarcerated during this pandemic. New York should move to pass this legislation to protect more young people from being sadly snatched into

This same policed community of color is the one now being hardest hit by the COVID-19 virus. In order to adequately address this crisis, New York State will need people to cooperate with official efforts at testing and contact tracing. That will require a level of trust that the State has done little to earn. One way to earn that trust would be for the State to demonstrate its respect and regard for the inherent rights of a community that has suffered heavily from its treatment by law enforcement. Black and Latinx young people and their families rightfully have a tense relationship to the State, passing this legislation could start to rectify the past harms. Passage of the Juvenile Interrogation Bill would begin to move New York State in the right direction.

Raising the Lower Age

One important step NYS should take to help ensure that youth are not needlessly incarcerated and to build trust between communities of color and law enforcement during this difficult time is to raise the lower age of criminal liability. Today, children as young as 7, children in second grade, can be arrested and prosecuted as juvenile delinquents in Family Court. Elementary

school age children can be arrested, questioned by police, and subject to probation. They can even be placed in juvenile detention. Not surprisingly, experts question whether children under the age of 12 can meaningfully participate in their own defense. Most troublingly, this harsh treatment of children has a disproportionate impact on children of color. In NYC, 93% of arrests of children under 12 were children of color in 2016 and 2017.

The Legislature should also enact [S. 8163](#) and its soon-to-be-introduced Assembly counterpart, raising the lower age of juvenile delinquency jurisdiction from 7 to 12 and prohibiting courts from remanding children under 13 to secure detention. The treatment of youth under 12 who engage in problematic behavior does not require a juvenile justice response. Should supportive services for the child and family be required, these services can be best secured through existing social services programs. During this time of crisis, it has become apparent that community safety can be maintained with a smaller number of persons confined and prosecuted through the juvenile and criminal justice system. This overdue legislation would establish reasonable parameters for the juvenile justice system without sacrificing community safety.

Child Welfare

New York State must provide technology and support to ensure children can remain connected to their families. As families engage in social isolation, technology has grown to play an increasingly important role in their lives. Children and families involved in the foster care system need access to phones, laptops and tablets and high-quality broadband internet to allow children to stay connected to their families, social workers, teachers, and essential health and mental health services. This is particularly true for children who are only able to engage in remote visitation with their family members.

Many of the families involved in the child welfare system, which disproportionately affects black and brown families and families living in poverty, are already significantly disadvantaged by the digital divide. The increased importance of access to technology during the pandemic only exacerbates this disadvantage, causing further trauma to children and their families during this incredibly difficult time.

We urge the State to make significant investments to ensure that our children and families are equitably connected to the tools and technology they need throughout the public health emergency.

Education

The COVID-19 crisis has created unprecedented challenges for our school system. We commend the Department of Education for its rapid response, and for immediately recognizing that our city's most vulnerable youth - those residing in homeless shelters and in foster care - would need priority access to technology devices in order to participate in remote learning. To date, the DOE has distributed over 300,000 iPads, laptops and tablets to students in need. This underscores the fact that, prior to this crisis, a huge segment of NYC's student population had no access to technology in their homes. In today's world, access to technology is a need, not a luxury. Students who do not have access to technology in their homes are unable to conduct on-line research for classes, communicate with teachers and classmates, submit college applications, and much more. We urge NYS to follow this lead and ensure that students continue to have access to tech devices and internet service even after schools reopen.

Ensuring Racial Equity in New York's COVID-19 Recovery – Summary of Recommendations

We ask the Legislature strongly to consider the following:

- This legislature should enact S8140A/A10248 immediately to provide rental assistance to tenants who have faced COVID-19 related financial hardship.
- The legislature should enact the “Safe Harbor” bill, S8192A/A10290. This bill would amend RPAPL §711 to provide that during the state of emergency and through six months after the state of emergency is lifted, no tenant can receive a judgment of possession for a case brought by his or her landlord for nonpayment of rent. S8192A/A10290 would allow the tenant to remain in their home but allow the landlord to pursue a money judgment against the tenant.
- The legislature should enact S 2892A (Salazar)/A 5030 (Hunter). The Good Cause bill would extend the right to a renewal lease and protections from unconscionable rent increases to all tenants across New York State, except those living in owner-occupied buildings with four or fewer units. The bill also acknowledges that steep rent increases are often de facto evictions, and requires that rent increases of more than 1.5 times the annual percentage change in the consumer price index be presumed unreasonable, unless accompanied by special conditions.
- The legislature should press OTDA to work with stakeholders to maximize availability of short-term rent arrears and sustainable subsidies for more New Yorkers.
- The legislature should make clear to our Congressional delegation that they must act or we will be facing hundreds of thousands of new homeless individuals and a worsening health crisis. We see extreme need for robust short term aid for tenants who will get their jobs back when the economy reopens, medium term rental support for those who will need more time to obtain employment, and more long term Section 8 for those because of the loss of a bread winner or because of health issues may not be able to pay their rent within two years.
- The legislature should enact Home Stability Support (HSS) S.2375 (Krueger)/A.1620 (Hevesi), which would create a statewide housing supplement program providing payments of up to the Fair Market Rent.
- The legislature should enact the Housing Access Voucher Program S07628 (Kavanagh)/A9657 (Cymbrowitz), which would create a state-wide Section 8 program to provide homeless and low-income New Yorkers with access to stable, safe, and affordable housing by providing housing vouchers, capping tenants’ rent at 30 percent of household income and covering between 90 percent and 110 percent of a community’s Fair Market Rent.
- The legislature should enact passage of S.7946B, a bill to amend § 5004 of the New York Civil Practice Law & Rules (“CPLR”) to reduce the pre- and post-judgment interest rate for consumer debt actions from 9% to a variable rate based on the one-year Treasury bill rate. To ensure that the interest rate on consumer debt judgments will not climb higher than existing market conditions, the bill adopts a variable rate used in federal law, namely the weekly average one-year constant maturity United States treasury yield. The bill also includes an interest rate cap of 3% to ensure that low-income consumers will not be

unreasonably burdened, keeping the rate modest enough for consumers to fairly repay their debts.

- The legislature should encourage Governor Andrew Cuomo to issue a moratorium on the enforcement of money judgments and protect CARES Act stimulus payments from debt collectors under the authority accorded to him under Section 29-a of Article 2-B of the Executive Law.
- The legislature should enact the Protect Our Courts Act, A.02176/S.00425, which would expand the Civil Rights Law to prohibit ICE from arresting people, and those accompanying them, on their way to or from court, without a judicial warrant, and by ensuring that this right to attend court is enforced throughout the state.
- The legislature should take additional steps to ensure that immigrants who are not eligible for cash assistance and SNAP have access to assistance to meet their needs. The legislature should either expand access to non-citizens or push OTDA to forge public/private partnerships to meet these needs.
- The legislature should work with our Congressional delegation to ensure that new stimulus benefits are available to more immigrants. Any new stimulus money (a) cannot include the Social Security number requirement, which precludes access to mixed-status and other immigrant households; (b) be issued in a more automated way that does not leave immigrants out; and (c) include the issuance of Disaster SNAP, for which all immigrants are eligible.
- The legislature should enact S8277, which would provide unemployment insurance benefits for undocumented workers along with others unnecessarily excluded from receiving those benefits.
- The legislature should reform the unemployment insurance system by increasing the maximum weekly unemployment benefit rate, implementing a more rational approach to partial unemployment that takes into account actual earnings in a week, and eliminating “forfeiture” penalties.
- The legislature should make clear to the Department of Labor that it cannot continue to unlawfully deny unemployment insurance to gig economy employees.
- The legislature must take steps critical steps to protect workers who retain their employment. Government and employer decisions regarding working conditions must be based on science and worker safety, not the economy. There must be strong, unambiguous, and enforceable workplace safety rules established and mandated and increased personal protective equipment (PPE) for all workers provided by employers. Workers must have stronger protections against workplace retaliation, especially when commenting or complaining about workplace safety, and it is essential that there is fast, free and widespread testing followed by tracking of infected workers along with their contacts so that the infected and those suspected to be infected can be excused from the workplace with pay and without fear of retaliation.

- The legislature should make a finding pursuant to NY Soc. Serv. L. § 153(8) that the COVID-19 is an emergency circumstance so that Safety Net Assistance (SNA) benefits are paid to New Yorkers without a 45-day waiting period and local districts can receive State reimbursement for these benefits.
- The legislature should modify the resource rules in the Social Services Law, set forth at Soc. Serv. L. § 131-n (1), which require many temporarily unemployed New Yorkers to spend down even modest savings to meet resource thresholds and spend their 401(k) plan retirement savings and any tax refund to receive critical assistance.
- The legislature should also modify the Social Services Law by: (a) increasing the amount of earned income that is disregarded and extending this disregard to applicants (Soc. Serv. L. § 131-a(8)(iii)); (b) repealing the 185% Rule (Soc. Serv. L. § 131-a(10)); and (c) repealing the Mortgage Lien which permits local districts to take a mortgage for the amount of public assistance paid (Soc. Serv. L. § §SSL 106 and 360).
- The legislature should exempt forms of federal assistance related to the COVID-19 pandemic from being counted as income for purposes of qualification for assistance by mandating the modification of OTDA General Information System Message 20 TA/DC035 (April 29, 2020).
- The legislature should mandate standards to ensure that new recipients have the means to access benefits via Electronic Benefits Transfer (EBT) cards. During the COVID-19 emergency, the Legislature should mandate a standard for issuance by mail such that after a local district approves an application for benefits, an EBT card must be mailed no later than the next business day via express mail. The Legislature should also require that local districts provide for same-day issuance of EBT cards at each location at which applications for Cash Assistance and SNAP benefits are taken.
- The legislature should exercise its oversight authority over OTDA to mandate real-time data reporting by local districts.
- The legislature should push Congress for more assistance for New Yorkers, and to keep current forms of assistance in place for as long as possible.
- The legislature should work with the federal government to secure additional methods to further automate access to stimulus payments for all eligible New Yorkers. We ask that the State communicate with the federal government regarding its SNAP recipients so that automatic payments can be made.
- The legislature should expand automatic recertification for Medicaid. A bill to do so, A. 9017/ S. 7523, passed the legislature last year as A. 7578/S. 5485, but it was vetoed by Governor Cuomo.
- The legislature should enact A5974/S3900, which would expand the Essential Plan to provide free or low cost health insurance to all New Yorkers up to 200% of the federal poverty level regardless of immigration status.

- The legislature should enact the New York Health Act, A.5248/S.3577, which would establish universal health care for all New Yorkers.
- The legislature should enact legislation that would raise the Disabled, Blind, and Aged Medicaid income limit to 138% of the Federal Poverty Level (FPL) and eliminate the resource limits for this population to align the eligibility requirements for disabled and senior Medicaid enrollees with the rest of the Medicaid population.
- The legislature should enact legislation that we have proposed, which would address several of the most egregious aspects of the Medicaid overpayment investigation and collections process in New York State. We would add to this ensuring that the continuing Medicaid benefits resulting from the federal requirements of the Family First Coronavirus Response Act are immune from recovery by the state and local districts if it is later determined that an individual was not otherwise eligible during the time period of the crisis.
- The legislature should press the relevant state agencies to continue measures to: minimize required in-person contact with city and state entities for those applying for and renewing Medicaid benefits; encourage continuity of and ease of access for Medicaid coverage; encourage flexibility and safety in accessing health care services; ensure access to and continuity of home care and long-term services in the community; improve conditions within congregate care facilities; and acknowledge the severe financial hardship New Yorkers are and will be facing.
- The State must pass the Police Statistics & Transparency (STAT) Act [S1830/A05472](#) (Hoylman/Lentol) and Repeal 50-a Act [S3695/A2513](#) (Bailey/O'Donnell). New Yorkers need transparency from law enforcement now more than ever.
- New York must curtail the criminalization of communities of color especially during COVID-19 where police interactions can become extremely violent or expose community members needlessly to COVID-19. The State must pass the Reduce Unnecessary Arrests for Non-criminal Offenses Act [S2571/A4053](#) (Bailey/Aubry) and must repeal the antiquated anti-masking law, New York Penal Law § 240.35(4).
- New York must proactively move to help sure up financial resources for communities of color that are disproportionately policed and targeted for low level criminalization by passing the Marijuana Regulation and Taxation Act (MRTA) A. 1617C/S. 1527C (Peoples-Stokes/Krueger). Communities need the financial resources to ensure that COVID-19 will not completely decimate these vulnerable and harshly impacted neighborhoods.
- New York must make major strides in reducing the prison and jail populations by passing the Less is More: Community Supervision Revocation Reform Act S1343C/A5493B (Benjamin/Mosely). Public health officials have warn us that incarceration breeds viral epidemics we cannot wait until it is too late. We must act now.

- The legislature must pass the Prohibit the use of biometric surveillance technology by law enforcement S7572/A9767 (Hoylman/Glick), Reverse Location Search Prohibition Act A10246 (Quart), and S6009/A7818 (Holyman/Wright), which restricts localities from creating rogue DNA databanks.

Conclusion

As New York begins to look forward to recovering from COVID-19 and this global pandemic, we ask the New York State Legislature to take charge in fighting to ensure that communities of color receive resources to guarantee that people of color will never be this vulnerable again. So many of the reforms and recommendations highlighted here have long been the subject of advocacy by The Legal Aid Society. The pandemic has exacerbated and highlighted the problems and deficiencies with the status quo. Jails and prisons have always been deadly places and this pandemic only highlighted that fact. Homelessness has always threatened the health and safety of poor New Yorkers. Access to hazard pay, safe working conditions, universal healthcare, and a viable social safety net should be policies enacted because people deserve them and not just because of an extreme global disaster.

Communities of color came into this crisis at an extreme disadvantage. If we hope to achieve racial equity in New York, we must pour resources and services into these communities, not police or jails.